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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

14 SHOSH YONAY, an individual, and
15 YUVAL YONAY, an individual,

16 Plaintiffs,

17 v.
18
19 PARAMOUNT PICTURES
20 CORPORATION, a Delaware
21 corporation, and DOES 1-10,
22
23 Defendants.

Case No. 2:22-CV-3846-PA-GJS

LOCAL RULE 56-1
STATEMENT OF
UNCONTROVERTED FACTS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

[*Filed with: Plaintiffs' Motion for Summary Judgment; Declaration of Marc Toberoff; [Proposed] Judgment; Notices of Lodging*]

24
25 **Hearing Date:** January 8, 2024
26 **Hearing Time:** 1:30 P.M.
27 **Location:** Courtroom 9A
28 **Judge:** Hon. Percy Anderson
Oral Argument Requested

Pursuant to Local Rule 56-1 of the Local Rules of the United States District Court for the Central District of California, Plaintiffs Shosh and Yuval Yonay (“Yonays”) respectfully submit the following Statement of Uncontroverted Facts in support of their Motion for Summary Judgment.

SUF No.	Uncontroverted Facts	Supporting Evidence
1.	Ehud Yonay (“Author”) is the author of the original 1983 story entitled “Top Guns” (the “Story”).	Declaration of Marc Toberoff (“Toberoff Decl.”) Ex. 1 (the Story, referenced as “Exhibit A” to the Parties’ Joint Stipulation of Authenticity) at YONAY01238; Ex. 2 at YONAY01223.
2.	The Story was published on April 21, 1983, in the May 1983 issue of <i>California Magazine</i> , which issue was registered with the U.S. Copyright Office on October 3, 1983 (Reg. No. TX0001213463).	Toberoff Decl., Ex. 1 at YONAY01236, 01238; Ex. 2 at YONAY01223; Ex. 21 at 1.
3.	At the time the Story was published, <i>California Magazine</i> published material in the style of “New Journalism,” which placed the journalist and their subjective expression at the forefront.	Toberoff Decl., Ex. 3 at 6.
4.	Author acquired the copyright in the Story from <i>California Magazine</i> ’s parent company, pursuant to an assignment dated May 18, 1983, and as such held a valid copyright in the Story.	Toberoff Decl., Ex. 2 (referenced as “Exhibit E” to the Parties’ Joint Stipulation of Authenticity) at YONAY01223; Ex. 21 at 1; Ex. 22 at 1.
5.	Within weeks of the Story’s publication, Paramount Pictures Corp. (“PPC”) secured	Toberoff Decl., Ex. 2 at YONAY01223-01234.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	3 from Author an “Assignment of Rights” 4 dated May 18, 1983, locking up the 5 exclusive motion picture, television and merchandising rights under copyright in the Story (the “1983 Agreement”).	
6	7 In the 1983 Agreement, PPC refers to the Story as a “published story written by Ehud Yonay entitled ‘TOP GUNS’.”	Toberoff Decl., Ex. 2 at YONAY01223; Ex. 5 at 7-8.
9	10 7. The 1983 Agreement repeatedly refers to and acknowledges the Author’s “copyright” in the Story, ensures that the Story is “wholly original with the Author,” and in paragraph 4 of the Standard Terms asserts that PPC be appointed Yonay’s attorney-in-fact to secure copyright extensions thereof.	Toberoff Decl., Ex. 2 at YONAY01226-01228, YONAY01231-01233.
15	16 8. In the 1983 Agreement, PPC ensured that the Author will “extend . . . such copyright or copyrights” in his Story and “and will convey, grant and assign to [Paramount] such . . . extension of copyright and the rights herein conveyed, granted and assigned for such . . . extended [] term”, and appoints Paramount “as the attorney-in- fact of the Author . . . to execute, deliver and record on behalf of the Author and in the name of the Author or otherwise, any and all assignments and other documents necessary or proper to convey, grant and assign to [Paramount] such . . . copyright and the rights herein conveyed, granted and assigned, for the term” thereof.	Toberoff Decl., Ex. 2 at YONAY01233 (“Assignment”), ¶ 2(b).
27	28 9. The 1983 Agreement required PPC to give the Author credit on films “substantially	Toberoff Decl., Ex. 2 at YONAY01228, ¶ 7(b).

SUF No.	Uncontroverted Facts	Supporting Evidence
	based upon or adapted from said work [the Story] or any version or adaptation thereof, substantially incorporating the plot, theme, characterizations, motive and treatment of said [Story]”.	
10.	PPC’s 1983 Agreement ensured that no competing motion picture studio could produce a motion picture based on the Author’s Story.	Toberoff Decl., Ex. 2 at YONAY01223-01234.
11.	The 1983 Agreement was a valid contract entered into by the Author and PPC.	Toberoff Decl., Ex. 2 at YONAY01223-01234.
12.	The Yonays are the Author’s heirs and are the successors-in-interest to the Author’s rights and entitlements under the 1983 Agreement.	Toberoff Decl., Ex. 6 at YONAY00042.
13.	The resulting film <i>Top Gun</i> (the “1986 Film”) used extensive elements of the Story including characters’ traits, the mood, pace, setting, and themes and PPC provided the Author and his Story with credit on the 1986 Film pursuant to ¶ 7 (b) of the “Standard Terms” of the 1983 Agreement.	Toberoff Decl., Ex. 2 at YONAY01228, ¶ 7(b); Ex. 7 at 01:48:12; Ex. 8 at 2; Ex. 5 at 9. <i>See</i> Toberoff Decl., Ex. 7 (the 1986 Film <i>Top Gun</i> , referenced as “Exhibit C” to the Parties’ Joint Stipulation of Authenticity), generally. <i>See</i> Toberoff Decl., Ex. 20 (Chart of Similarities), generally.
14.	PPC failed to provide the Author with credit on the 2022 film <i>Top Gun: Maverick</i> (“Sequel”), as required by the 1983 Agreement.	Toberoff Decl., Ex. 9 at 2.
15.	The June 16, 1983 writing services agreement between PPC and the loan-out	Toberoff Decl., Ex. 10 (referenced as “Exhibit G”)

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2	3 entities for Jim Cash and Jack Epps, Jr. 4 (credited writers of the 1986 Film) 5 specifically states that they shall write a 6 “first draft screenplay and one set of 7 revisions based upon assigned material, 8 i.e. the article by Ehud Yonay.”	9 to the Parties’ Joint 10 Stipulation of 11 Authenticity) at 12 TGM0037127, ¶ B(1).
13 16.	14 The February 11, 1985 writing services 15 agreement between PPC and Chip Proser 16 (who did uncredited rewrites on the 1986 17 Film) specifically states that his writing is 18 to be “based upon assigned material 19 consisting of the screenplay by Jim Cash 20 and Jack Epps and the magazine article by 21 Ehud Yonay entitled ‘TOP GUNS.’”	22 Toberoff Decl., Ex. 11 23 (referenced as “Exhibit H” 24 to the Parties’ Joint 25 Stipulation of 26 Authenticity) at 27 TGM0005320.
28 17.	19 Jack Epps, Jr.’s August 24, 1983 20 Certificate of Authorship stated he was 21 writing a draft screenplay “based on 22 Paramount-assigned material,” i.e., the 23 Story.	24 Toberoff Decl., Ex. 12 at 25 TGM0005262.
26 18.	27 Chip Proser’s March 4, 1985 Certificate of 28 Authorship stated he was writing material 1 based on “PPC-assigned material,” i.e., the 2 Story and the draft screenplay by Cash and 3 Epps, Jr.	4 Toberoff Decl., Ex. 13 at 5 TGM0005318.
6 19.	7 On January 23, 2018, the Yonays, the 8 widow and son of the Author, 9 respectively, properly availed themselves 10 of their right to recover the copyright to 11 the Story under the Copyright Act, 17 12 U.S.C. § 203(a), by sending PPC a 13 statutory notice of termination (the 14 “Termination Notice”) and thereafter 15 filing it with the Copyright Office, 16 effective January 24, 2020.	17 Toberoff Decl., Ex. 14 18 (referenced as “Exhibit F” 19 to the Parties’ Joint 20 Stipulation of 21 Authenticity) at 1-3; Ex. 22 15 at 1.

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20.	The Termination Notice, recorded with the U.S. Copyright Office on January 29, 2018 (Doc. No. V9949D433), fully complied with Section 203(a) of the Copyright Act and the regulations promulgated thereunder by the Register of Copyrights, 37 C.F.R. § 201.10.	Toberoff Decl., Ex. 14 at 1-3; Ex. 15 at 1.
21.	On January 24, 2020, the copyright to the Story thus reverted to the Yonays under the Copyright Act, and as of that date, the Yonays are the sole owners of the U.S. copyright in the Story.	Toberoff Decl., Ex. 14 at 1-3; Ex. 15 at 1.
22.	PPC's 1986 Film, produced by Jerry Bruckheimer and its screenplay written by Jim Cash and Jack Epps, Jr., is based on the Story, and credited the Author for his Story in the closing credits of the 1986 Film.	Toberoff Decl., Ex. 7 at 01:48:12; Ex. 8 at 1; Ex. 5 at 9.
23.	The Sequel, also produced by Bruckheimer and on which Cash and Epps again received writing credit, is derived from the Story on which the 1986 Film is based, and incorporates flashbacks and framed stills from the 1986 Film.	Toberoff Decl., Ex. 3 at 9-10; Ex. 9 at 1. Dkt. 53-2 (the 2022 film <i>Top Gun: Maverick</i> , referenced as "Exhibit B" to the Parties' Joint Stipulation of Authenticity) at 00:03:45, 00:17:00-00:17:25, 00:31:15-00:32:30, 02:03:10.
24.	Jim Cash and Jack Epps, Jr., writers of the 1986 Film, received credit on the Sequel for the characters.	Toberoff Decl., Ex. 9 at 1; Ex. 16 (Excerpts from Deposition of <i>Top Gun: Maverick</i> director Joseph Kosinski) at 24:2-9.

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25.	The director of the Sequel characterized the Sequel as a sequel to the 1986 Film.	Toberoff Decl., Ex. 16 at 38:18-22.
26.	James McDonald did not review the 1986 Film when preparing his Rebuttal Expert Report.	Toberoff Decl., Ex. 17 at 3.
27.	James McDonald's Rebuttal Expert Report discusses substantial similarity of protectable expression between the Story and the Sequel using the extrinsic test applicable in copyright infringement cases.	Toberoff Decl., Ex. 17 at 1-3.
28.	James McDonald's Rebuttal Expert Report does not analyze whether PPC breached the 1983 Agreement.	Toberoff Decl., Ex. 17 at 1-3.
29.	The Sequel was not picture locked until after January 24, 2020.	Toberoff Decl., Ex. 5 (PPC's Responses to Yonays' 1 st RFAs) at 32.
30.	The filming for the Sequel was not completed until after January 24, 2020.	Toberoff Decl., Ex. 18 (PPC's Responses to Yonays' 2 nd RFAs) at 27-28.
31.	The editing for the Sequel was not completed until after January 24, 2020.	Toberoff Decl., Ex. 18 at 28.
32.	The audio mix for the Sequel was not completed until after January 24, 2020.	Toberoff Decl., Ex. 5 at 33.
33.	The visual effects for the Sequel were not completed until after January 24, 2020.	Toberoff Decl., Ex. 5 at 34.
34.	The color grading for the Sequel was not completed until after January 24, 2020.	Toberoff Decl., Ex. 5 at 34-35.
35.	The post-production on the Sequel was not completed until after January 24, 2020.	Toberoff Decl., Ex. 5 at 35.

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36.	PPC continued to have its employees and/or contractors work on the Sequel after June 1, 2020, as shown in PPC's "Island Plaza" (a code name for the Sequel) post-production schedule.	Toberoff Decl., Ex. 16 at 74:13-19, Ex. 18 at 26-27. <i>See</i> Toberoff Decl., Ex. 33, generally.
37.	The editing for the Sequel was not completed until at least May 2020.	Toberoff Decl., Ex. 16 at 67:15-67:22.
38.	New scenes for the Sequel were still being filmed in February 2020.	Toberoff Decl., Ex. 16 at 55:8-56:12, 54:12-14.
39.	Reshoots and pickups for the Sequel were still being filmed in February 2020.	Toberoff Decl., Ex. 16 at 49:7-13; 56:14-18, 57:4-14.
40.	Visual effects were still being added to unfinished shots for the Sequel in February 2020.	Toberoff Decl., Ex. 16 at 103:23-104:7.
41.	PPC sent a note with suggested changes to the Sequel on February 12, 2020.	Toberoff Decl., Ex. 16 at 74:20-75:4.
42.	COVID-19 stay-at-home orders delayed post-production for the Sequel starting in March 2020.	Toberoff Decl., Ex. 16 at 105:9-13, 63:12-66:21.
43.	The lead editor for the Sequel edited the film from his home because of COVID-19 stay-at-home orders.	Toberoff Decl., Ex. 16 at 60:4-8; Ex. 33 at TGM0010089.
44.	The post-production schedule for the Sequel was extended from 43 weeks to 47 weeks on or around March 26, 2020.	Toberoff Decl., Ex. 16 at 113:14-21; Ex. 32 at TGM0020147.
45.	The director for the Sequel was still working on post-production from his home as of April 16, 2020.	Toberoff Decl., Ex. 16 at 59:19-60:3; Ex. 36 at YONAY01217.

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46.	The Sequel still had musical additions, scene additions, additional dialogue recording, sound mixing, visual effects, and sound design to be completed as of April 27, 2020.	Toberoff Decl., Ex. 16 at 68:2-74:9.
47.	Additional dialogue recording sessions for the Sequel took place in April and May 2020.	Toberoff Decl., Ex. 16 at 88:18-22.
48.	Foley sounds were completed for the Sequel at the earliest, around April or May 2020.	Toberoff Decl., Ex. 16 at 90:22-91:8.
49.	Recording and mixing of the score for the Sequel were still to be determined as of May 7, 2020.	Toberoff Decl., Ex. 16 at 102:11-15, 106:17-23.
50.	The post-production schedule for the Sequel was extended by three weeks sometime after May 7, 2020.	Toberoff Decl., Ex. 16 at 102:19-103:12.
51.	The director of the Sequel estimated that the Sequel was picture locked in May 2020.	Toberoff Decl., Ex. 16 at 84:2-6.
52.	The Sequel was still in post-production as of July 4, 2020.	Toberoff Decl., Ex. 16 at 61:14-20.
53.	Pursuant to PPC's post-production schedule dated May 7, 2020 the final mix for the Sequel was scheduled to be approved on July 24, 2020.	Toberoff Decl., Ex. 16 at 77:12-21; Ex. 33 at TGM0010093.
54.	PPC applied for a <i>force majeure</i> extension for the Sequel with the California Film Commission on March 19, 2020 that would extend through at least June 7, 2020.	Toberoff Decl., Ex. 31 at TGM0119352.

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55.	On July 24-25, 2020, PPC executives discussed obtaining an additional <i>force majeure</i> extension for the Sequel with the California Film Commission, which would “protect through all of August,” i.e., August 2020.	Toberoff Decl., Ex. 34 at TGM0119353.
56.	A request was made to extend the post-production schedule for the Sequel an extra four months beyond June 7, 2020.	Toberoff Decl., Ex. 16 at 114:15-19.
57.	Additional dialogue recording for the Sequel was completed at the earliest in June or July 2020.	Toberoff Decl., Ex. 16 at 87:13-25.
58.	Pursuant to PPC’s post-production schedule dated May 7, 2020, the “answer print” for the Sequel was scheduled to be completed by July 31, 2020.	Toberoff Decl., Ex. 16 at 102:19-103:12; Ex. 33 at TGM0010093.
59.	The final mix for the Sequel was completed at the earliest in July 2020.	Toberoff Decl., Ex. 16 at 75:22-76:5.
60.	Visual effects for the Sequel were completed at the earliest in or around August 2020.	Toberoff Decl., Ex. 16 at 101:18-102:1.
61.	The near field mix and IMAX mix for the Sequel were completed at the earliest in Summer 2020, and were shown on PPC’s schedule have been worked on in August 2020.	Toberoff Decl., Ex. 16 at 97:24-98:16; Ex. 33 at TGM0010094.
62.	The answer print for the Sequel was not delivered to PPC until at least Summer 2020.	Toberoff Decl., Ex. 16 at 111:10-24.
63.	The score and other music additions for the Sequel, including Lady Gaga’s “Hold My Hand” and OneRepublic’s “I Ain’t	Toberoff Decl., Ex. 16 at 89:19-90:1.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	Worried,” were still being produced in 2020.	
4	64. The home video mix for the Sequel was completed at the earliest in Spring 2021.	Toberoff Decl., Ex. 16 at 98:11-19.
6	65. The director for the Sequel shot a music video for the song “Hold My Hand” by Lady Gaga, featured in the Sequel, in July 2021.	Toberoff Decl., Ex. 16 at 57:15-19.
9	66. The home video mix for the Sequel was still being edited as of October 20, 2021.	Toberoff Decl., Ex. 16 at 93:21-97:1.
11	67. The song “Hold My Hand” by Lady Gaga was added to the Sequel in March or April 2022.	Toberoff Decl., Ex. 16 at 58:18-20; 98:10-11.
14	68. Twickenham Film Studios made additional updates to the mix for the Sequel in April 2022.	Toberoff Decl., Ex. 16 at 76:6-24.
17	69. According to the film industry website imdbPro.com, the Sequel was not completed until May 8, 2021, nearly 17 months after Yonay’s copyright grant to PPC in the 1983 Agreement had been statutorily terminated.	Toberoff Decl., Ex. 14 at 1-3; Ex. 15 at 1; Ex. 28 at 3.
22	70. PPC represented in its registration of the Sequel with the U.S. Copyright Office that the “year of completion” for the Sequel was 2022.	Toberoff Decl., Ex. 4 at TGM0168145.
25	71. PPC was and is involved in the financing, production, and distribution of the Sequel in the United States and is the film’s purported copyright holder.	Toberoff Decl., Toberoff Decl., Ex. 9 at 1; Ex. 4 at TGM0168145.

SUF No.	Uncontroverted Facts	Supporting Evidence
72.	The Yonays sent a cease-and-desist letter to PPC on May 11, 2022, placing PPC on notice of its infringement.	Toberoff Decl., Ex. 19 at 1-2.
73.	PPC On January 18, 2023, PPC made a congratulatory announcement internally, and to director Joseph Kosinski, producer Jerry Bruckheimer and others, that the Sequel's screenplay had been nominated for the USC Scripter Award, specifying that the screenplay was "based on characters from the 1983 magazine article "Top Guns" (author Ehud Yonay)."	Toberoff Decl., Ex. 26 at TGM0124309; Ex. 27 at TGM0124315.
74.	PPC executive Marc Weinstock forwarded this January 18, 2023 email to fellow PPC executive David Waldman stating that this was "a really good sign."	Toberoff Decl., Ex. 27 at TGM0124315.
75.	Soon thereafter, PPC abruptly withdrew the Sequel screenplay from the USC Scripter competition due to its designation as "based on characters from the 1983 magazine article "Top Guns" (author Ehud Yonay)."	Toberoff Decl., Ex. 28 at TGM0124419; Ex. 29 at TGM0124431.
76.	The Story singles out and focuses on two jocular, confident, up-and-coming lieutenants competing to make names for themselves at the "Top Gun" aerial combat school who became close friends and a team, sharing the cockpit of state-of-the-art fighter jet: Alex a.k.a. "Yogi" a hotshot pilot and Dave a.k.a. "Possum," his radar intercept officer ("RIO").	<i>See</i> Toberoff Decl., Ex. 1, generally. Toberoff Decl., Ex. 3 at 9, 11, 27; Ex. 20, No. 1.

SUF No.	Uncontroverted Facts	Supporting Evidence
77.	The 1986 Film ¹ focused on two jocular, up-and-coming lieutenants competing to make names for themselves at the “Top Gun” aerial combat school who became close friends and a team, sharing the cockpit of state-of-the-art fighter jet: Pete a.k.a. “Maverick” a hotshot pilot and Nick a.k.a. “Goose,” his RIO, who dies in a flying accident. The Sequel features hotshot pilot, Maverick, now older, and a key story element is his friendship with Goose, depicted in flashbacks and photos. Goose’s legacy is also brought back in the form of his son, “Rooster,” a Top Gun graduate.	Toberoff Decl., Ex. 3 at 11 Ex. 20, No. 1. <i>See</i> Toberoff Decl., Ex. 7, generally. <i>See</i> Dkt. 53-2, generally; at 00:17:00-00:17:25, 00:31:15-00:32:30, 02:03:10.
78.	In the Story, Yogi (age 26) is single and is described as having dark hair and movie star good looks. Possum (age 25) is “married [to] his high school sweetheart,” Lisa, and is described as having wavy light brown hair and a mustache.	Toberoff Decl., Ex. 1 at YONAY01239-01240, YONAY01241-01242, 102; Ex. 3 at 29; Ex. 20, No. 2.
79.	In 1986 Film, Maverick is single, mid-twenties, and good-looking (Tom Cruise), and Goose is married, with wavy light brown hair and a mustache. The Sequel revolves around Maverick’s memories and guilt re: Goose, Goose’s wife, and their son, Rooster (who has wavy light-brown hair and a mustache).	Toberoff Decl., Ex. 3 at 29; Ex. 20, No. 2. <i>See</i> Dkt. 53-2, generally. <i>See</i> Toberoff Decl., Ex. 7, generally.
80.	In the Story, Yogi and Possum are portrayed as close “family”: Possum “will spend more hours of [his] married years with Yogi than with [his wife].”	Toberoff Decl., Ex. 3 at 29; Ex. 20, No. 2.; Ex. 1 at YONAY01245; Ex. 3 at 14; Ex. 20, No. 3

¹ The 1986 Film is referenced with the Sequel when this provides context for understanding the similarity in the Sequel. Otherwise, if not separately delineated, the similarities below refer to the Sequel.

SUF No.	Uncontroverted Facts	Supporting Evidence
81.	Maverick and Goose are portrayed as close “family” in the 1986 Film and the Sequel, and Maverick treats Rooster like a son, which is more profound as Maverick has never been married and has no children.	Toberoff Decl., Ex. 3 at 14; Ex. 20, No. 3. <i>See</i> Toberoff Decl., Ex. 7, generally. <i>See</i> Dkt. 53-2, generally.
82.	The Story portrays Yogi as being enamored with high-intensity flying of the fastest fighter jets. He “wanted to fly ever since he was twelve.” It “blew his mind,” “but there was [an] admission price to the land of the giants.” To fly the best fighter jets, he had to be the best.	Toberoff Decl., Ex. 1 at YONAY01242; Ex. 3 at 30; Ex. 20, No. 5.
83.	Maverick is enamored with high-intensity flying of the fastest fighter jets. Flying is all he ever wanted to do. The 1986 Film portrays him this way and the Sequel has him continually striving to be the very best of the best.	Toberoff Decl., Ex. 3 at 30; Ex. 20, No. 5. <i>See</i> Toberoff Decl., Ex. 7, generally. <i>See</i> Dkt. 53-2, generally.
84.	From the Story: “Yogi was still in junior high school when he realized that flying straight and level might be okay for some people, but if you like yanking and banking—the feeling of riding inside one of those storm-in-a-bottle souvenirs—then there’s just one place for you, and that’s the cockpit of a fighter plane.”	Toberoff Decl., Ex. 1 at YONAY01239; Ex. 3 at 30; Ex. 20, No. 6.
85.	In the 1986 Film and the Sequel, the only place where Maverick feels truly at home is inside the cockpit of a fighter jet. In the Sequel, when he may have to give up flying fighter jets, it is crushing as he can hardly fathom life without it.	Toberoff Decl., Ex. 3 at 30; Ex. 7 at 00:05:56, 00:32:28-00:34:55; Ex. 20, No. 6. Dkt. 53-2 at 00:21:10-00:22:10, 01:17:15-01:18:45.

SUF No.	Uncontroverted Facts	Supporting Evidence
86.	In the Story, Yogi is portrayed as being seriously focused and dedicated to continually improving his fighter-jet flying, combat, and tactical skills, “almost too serious for the Wolfpack … us[ing] those long ocean flights to improve his flying skills.”	Toberoff Decl., Ex. 1 at YONAY01242, YONAY01245; Ex. 3 at 30; Ex. 20, No. 7.
87.	Maverick is seriously focused on cutting-edge flying and tactical skills in both the 1986 Film and the Sequel and continuously pushes his own (and the Navy’s) limits (e.g., forcing newest hypersonic plane to speeds exceeding Mach 10).	Toberoff Decl., Ex. 3 at 30; Ex. 20, No. 7. <i>See</i> Toberoff Decl., Ex. 7, generally. Dkt. 53-2 at 00:11:35-00:13:20.
88.	From the Story: “Just getting to [Top Gun] was the ultimate break. Only the best young flyers in a squadron ever make it, and they have already raced past most fighter pilots their age. If they play it right and look sharp, they might even get invited back as Top Gun instructors – which is as high as a fighter pilot can get.”	Toberoff Decl., Ex. 1 at YONAY01240; Ex. 3 at 12; Ex. 20, No. 8.
89.	In the Sequel, Maverick, now legendary, is invited back to Top Gun as an instructor to train the best-of-the-best fighter pilots.	Toberoff Decl., Ex. 3 at 12; Ex. 20, No. 8. Dkt. 53-2 at 00:19:45.
90.	In the Story, “[t]he first thing they see” when Yogi and Possum enter the Naval Air Station is a sign that says “WELCOME TO FIGHTERTOWN U.S.A.”	Toberoff Decl., Ex. 1 at YONAY01240; Ex. 3 at 25; Ex. 20, No. 9.
91.	In the 1986 Film, Maverick enters the Top Gun Naval Air Station, on-screen chyron says “Miramar, Calif. Fightertown U.S.A.”	Toberoff Decl., Ex. 3 at 25; Ex. 7 at 00:15:46; Ex. 20, No. 9.

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92.	The Naval Air Station, despite its supersonic, high-tech jets and rigorous training exercises, is romanticized and is portrayed in the Story as evoking 1950s post-war nostalgia: “Like the notion of the single-combat warrior, there is something slightly nostalgic about Naval Air Station Miramar. At night the darkened base could be mistaken for an old From Here to Eternity set, and even earlier in the day, when the base is bustling, it is enveloped in a time warp of unreality.”	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 26, 35; Ex. 20, No. 10.
93.	Despite its hypersonic, high-tech jets, and rigorous training exercises, the Naval Air Station in the 1986 Film and the Sequel is endearingly depicted with “1950s post-war nostalgia” and romanticized, as if from a bygone era.	Toberoff Decl., Ex. 3 at 26, 35; Ex. 7 at 00:18:00, 00:19:05, 00:22:00-00:23:00; Ex. 20, No. 10. Dkt. 53-2 at 00:16:25-00:17:20, 00:30:10, 00:59:00-01:01:20.
94.	The Story is set at a “Top Gun” school at the Naval Air Station in Miramar, CA, which is close to the Pacific Ocean and beach.	Toberoff Decl., Ex. 1 at YONAY01240; Ex. 3 at 24; Ex. 20, No. 11.
95.	The setting of the Sequel, which takes place in the present, is a Top Gun school at a Naval Air Station near the beach, said to be in San Diego, CA, even though the actual “Top Gun” school moved in 1996 from Miramar, CA to land-locked Fallon, NV.	Toberoff Decl., Ex. 3 at 24; Ex. 20, No. 11. Dkt. 53-2 at 00:16:35.
96.	In the Story, Yogi and Possum form a crew and, after their training, join other crews to form a battle-ready fighter squadron, the “Wolfpack.” “For as long as they remain in battle the Wolfpack will be	Toberoff Decl., Ex. 1 at YONAY01244-01245; Ex. 3 at 14; Ex. 20, No. 12.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	their home and family, security blanket and confessional circle.”	
4	97. In the 1986 Film, Maverick and Goose form a crew. After their training, though Goose has been killed, Maverick joins other top crews, to form a fighter squadron. In the Sequel, Maverick instructs top crews comprising a fighter squadron in preparation for battle, which he leads. The squadron is portrayed as a close-knit family, personally involved with, and reliant on, one another.	Toberoff Decl., Ex. 3 at 14; Ex. 7 at 01:27:28-01:29:00; Ex. 20, No. 12. <i>See</i> Dkt. 53-2, generally.
11	98. The Story emphasizes playful nicknames of lead characters, “Yogi” and “Possum,” and others (e.g., “Heater,” “Tiger One,” “Ratchet”).	Toberoff Decl., Ex. 1 at YONAY01240, YONAY01242, YONAY01243, YONAY01247; Ex. 3 at 7; Ex. 20, No. 13.
17	99. The Sequel emphasizes playful nicknames of lead characters, “Maverick,” “Rooster” (“Goose’s” son) and of others, whose nicknames are sources of comedic relief (e.g., “Baby on Board ‘Bob,’” “Hangman”).	Toberoff Decl., Ex. 3 at 28; Ex. 20, No. 13. Dkt. 53-2 at 00:25:07-26:00, 00:38:13-00:38:35.
22	100. Themes of jocular true grit, patriotic American nostalgia, the difficulty in balancing duty, love, and family, intergenerational divides, man versus machine, and the freedom that can only be found in the skies pervade the Story.	Toberoff Decl., Ex. 1 at YONAY01240-01241, YONAY01244-01245, YONAY01247; Ex. 3 at 20-22; Ex. 20, No. 14.
26	101. Themes of jocular true grit, patriotic American nostalgia, the difficulty in balancing duty, love, and family, intergenerational divides, man versus	Toberoff Decl., Ex. 3 at 20-22; Ex. 20, No. 14. <i>See</i> Toberoff Decl., Ex. 7, generally.

SUF No.	Uncontroverted Facts	Supporting Evidence	
2	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 machine, and the freedom that can only be found in the skies pervade the 1986 Film and the Sequel.	See Dkt. 53-2, generally.
102.	The Story characterizes fighter pilots as elite “hotshots” who are macho and cool. “Top Gun’s hotshot aces have virtually revolutionized the fighter pilot business and . . . established themselves as the international masters of the deadly art of air-to-air combat.”	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 12-13; Ex. 20, No. 15.	
103.	The Sequel characterizes fighter pilots as elite “hotshots” who are macho and cool. To form an elite squadron, the Navy assembles the No. 1 Top Gun graduates in each class who have established themselves as the masters of the deadly art of air-to-air combat.	Toberoff Decl., Ex. 3 at 12-13; Ex. 20, No. 15. Dkt. 53-2 at 00:20:00, 00:24:00-00:28:00.	
104.	The Story features Top Gun graduate, Randy Cunningham, as legendary because he not only downed “three MiGs [Russian fighter jets] in one day, but because those three took them over the magic five-kill line to make him the first official ace.”	Toberoff Decl., Ex. 1 at YONAY01246; Ex. 3 at 13; Ex. 20, No. 16.	
105.	In the 1986 Film, Maverick is legendary for being the only pilot to shoot down three MiGs in one day, and in the Sequel, after Maverick shoots down two more enemy jets, it is touted that this takes him over the five-kill line to make him the first official Top Gun “ace.”	Toberoff Decl., Ex. 3 at 13; Ex. 7 at 1:35:30-01:39:40; Ex. 20, No. 16. Dkt. 53-2 at 01:59:55.	
106.	The Story spotlights those fighter jet instructors who “could speak with the authority of actual combat experience.”	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 12-13; Ex. 20, No. 17.	

SUF No.	Uncontroverted Facts	Supporting Evidence
107.	In the Sequel, Maverick's extreme combat experience is compared to the elite pilots' lack of actual combat experience.	Toberoff Decl., Ex. 3 at 12-13; Ex. 20, No. 17. Dkt. 53-2 at 00:33:30-00:35:00.
108.	From the Story: "At Top Gun, back in those postwar days, everybody was hot. So hot that the place sizzled even when nothing was happening. So hot that a lot of people suggested that even Randy Cunningham didn't truly belong there. Not that he wasn't a great fighter pilot. His three-MiG day was awesome."	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 13; Ex. 20, No. 18.
109.	In the Sequel, when Maverick first shows up at the Naval Air Station, the Admiral in command conveys that he is a thing of the past, a dinosaur. And despite Maverick's legendary status and three-MiG day, the new elite fighter jocks refer to him as "Pops" or "Old Man."	Toberoff Decl., Ex. 3 at 13; Ex. 20, No. 18. Dkt. 53-2 at 00:14:20, 00:16:15, 00:25:20, 00:27:00.
110.	The Story portrays an aviation "caste system" with "dividing lines drawn like the circles around the bull's eye." On the outside, bomber pilots, next attack pilots who charge at ground targets. "In the inner rings, where fighter pilots belong, there are finer distinctions that only the pilots themselves can discern, until one tiny circle is left at the center, the bull's-eye, where the elite of the fighter elite stand in glorious isolation. The greatest of the greats, the makers of legends—the 'shithots.'" The bull's-eye was chosen as a metaphor for a fighter pilot's ability. The closer to the bull's-eye, the greater the ability of the pilot.	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 26-27; Ex. 20, No. 19.

SUF No.	Uncontroverted Facts	Supporting Evidence
111.	In the Sequel, to form a squadron for a special mission, the elite Top Gun graduates gather for training by Maverick, a fighter-pilot referred to as “legendary.” It is repeatedly emphasized that they are the fighter elites, the best of the best; they are hotshots. When Maverick first encounters the cockiest of them all, Hangman, he is throwing darts, consistently landing three-out-of-three in the bull’s-eye. This is used as a metaphor to illustrate that he is the elite fighter pilot with the greatest ability.	Toberoff Decl., Ex. 3 at 12-14; Ex. 20, No. 19. Dkt. 53-2 at 00:19:55, 00:21:30, 00:33:00, 00:33:40.
112.	From the Story: “[T]his fighter pilot’s Valhalla almost came to an end in late 1977, when a new Admiral assumed command of the Naval Air Station and set out to restore discipline and naval decorum . . . Suddenly the old peacetime regulations were being enforced, and before long the hotshots began to leave.”	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 11, 21; Ex. 20, No. 20.
113.	In the Sequel, instead of hailing Maverick as a hero, the Admiral at Top Gun makes clear that irreverent hotshots like Maverick have no place in his Navy, and the Vice Admiral under him values rules and regulations above the need of a top fighter pilot like Maverick to adapt quickly and instinctually to win.	Toberoff Decl., Ex. 3 at 11, 21; Ex. 20, No. 20. Dkt. 53-2 at 00:13:50-00:16:20, 00:17:20-00:20:39.
114.	The Story notes that the Top Gun’s dark ages lasted until the rigid Admiral was replaced by another who “was a fighter pilot’s pilot . . . A sigh of relief swept the fighter jock community, but by then so many of the original hotshots had left that hardly anybody with any war experience	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 11, 21; Ex. 20, No. 21.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	3 was available for a Top Gun instruction post.”	
4	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 115. In the Sequel, despite the disdain of the rigid Admiral who seeks to replace pilots with drones, Maverick is asked to report to Top Gun to fill an instructor post to train the elite squadron because another Admiral (Iceman in the 1986 Film), a fighter pilot’s pilot, who flew combat missions with Maverick, recognizes his value and war experience.	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Toberoff Decl., Ex. 3 at 11, 12, 21; Ex. 20, No. 21. Dkt. 53-2 at 00:13:50-00:16:20, 00:20:45-00:21:20.
116.	The Story characterizes Top Gun as a critical component of American national security. “IF WAR BROKE OUT AND THIS country’s aviators were ready for it, it would be a first, and the credit would belong entirely to Top Gun.”	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 15; Ex. 20, No. 22.
117.	The Sequel portrays Top Gun fighters as the only ones who can accomplish a seemingly impossible mission in enemy territory, vital to American national security.	Toberoff Decl., Ex. 3 at 15; Ex. 20, No. 22. Dkt. 53-2 at 00:32:50-00:33:30, 00:48:25-00:52:30, 01:07:35-01:10:30.
118.	The Story portrays Top Gun command as being fussy, finicky, and fawning over the pilots. “Fightertown . . . the entire mission . . . is to primp and fuss . . . [over] fighter jocks so that when the time comes and they’re staring down the missile racks of [enemy jets], they are primed and ready.”	Toberoff Decl., Ex. 1 at YONAY01240; Ex. 3 at 14; Ex. 20, No. 23.
119.	In the Sequel, the Top Gun command dotes and fixates on these best-of-the-best fighter jocks and their training so they are primed and ready for a difficult mission in enemy territory.	Toberoff Decl., Ex. 3 at 14; Ex. 20, No. 23. See Dkt. 53-2, generally.

SUF No.	Uncontroverted Facts	Supporting Evidence
120.	In the Story, Top Gun fighter pilots are portrayed romantically and metaphorically as elite knights, with a special code of honor, jousting in shining armor. For example: “If Miramar is a fighter pilot’s Camelot, then [] Top Gun . . . is King Arthur’s Round Table, the gathering of the greatest of the greats in fighter aviation.”	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 28; Ex. 20, No. 24.
121.	In the Sequel, the greatest fighter pilots are assembled and, along with Maverick, their legendary leader, are portrayed as skilled soldiers—members of an elite order, with a special code of honor.	Toberoff Decl., Ex. 3 at 28; Ex. 20, No. 24. <i>See Dkt. 53-2, generally.</i>
122.	In the Story, aerial combat training is portrayed as very competitive and Yogi, as extremely competitive: “In this business you hate to lose . . . and getting shot is synonymous with losing.”	Toberoff Decl., Ex. 1 at YONAY01240; Ex. 3 at 29; Ex. 20, No. 25.
123.	In the Sequel, aerial combat training is portrayed as very competitive and Maverick, as extremely competitive, even as he returns to Top Gun as a much older, accomplished fighter.	Toberoff Decl., Ex. 3 at 29; Ex. 20, No. 25. Dkt. 53-2 at 00:35:40-00:41:40, 00:50:05-00:53:45.
124.	In the Story, fighter crews are crestfallen when they are outmaneuvered and “shot down” even though it is just a part of their training.	Toberoff Decl., Ex. 1 at YONAY01240; Ex. 3 at 15, 34; Ex. 20, No. 26.
125.	In the Sequel, fighter crews are completely downcast when they are “shot down” in training.	Toberoff Decl., Ex. 3 at 15, 34; Ex. 20, No. 26. Dkt. 53-2 at 00:37:56, 00:38:00, 00:38:55.

SUF No.	Uncontroverted Facts	Supporting Evidence
126.	The Story sequences failed aerial combat maneuvers immediately followed by quiet, serious tactical discussions between fighters in the briefing room.	Toberoff Decl., Ex. 1 at YONAY01239-01240; Ex. 3 at 33; Ex. 20, No. 27.
127.	In the Sequel, failed aerial combat maneuvers by the elite fighters are followed by debriefing and tactical analysis in the classroom.	Toberoff Decl., Ex. 3 at 33; Ex. 20, No. 27. Dkt. 53-2 at 00:50:05-00:53:35.
128.	<p>The Story colorfully characterizes and portrays dry mechanical details of a fighter jet:</p> <ul style="list-style-type: none"> <li data-bbox="442 804 1046 1121">• Spotlights the afterburner in top fighter jets, an engine component that, at the pull of a throttle, burns huge amounts of fuel at incredible speed, resulting in a burst of raw power that no ordinary jet engine can duplicate and only a fighter needs; <li data-bbox="442 1121 1046 1522">• “Suddenly the acquisition symbol disappears, and a numbered aiming circle appears around the black square—this tells you at a glance how fast, how high, and in what direction the bogey is going . . . Pull the stick’s missile release or gun trigger with your right index finger. Bingo.”; <li data-bbox="442 1522 1046 1818">• “Say you’re entering bogey [enemy] country. To find out what’s ahead, push the air-to-air weapon select button with your right thumb. (This is basically an ‘on’ switch-your head-up display and digital display indicators are now operating.)” 	Toberoff Decl., Ex. 1 at YONAY01243; Ex. 3 at 15, 35; Ex. 20, No. 28.
129.	In the Sequel, there are repeated dramatic shots of pilots pulling the throttle of their	Toberoff Decl., Ex. 3 at 15; Ex. 20, No. 28.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	3 fighter jets causing a huge burst of engine power, and closeups of the pilots activating mechanical components, such as the triggering of the aiming circle that tracks the “enemy” jet’s movements, index fingers on gun triggers, and pushing the air-to-air weapon select button which lights up the system with a digital display.	4 Dkt. 53-2 at 00:36:25, 00:37:32, 00:38:55, 00:51:02, 01:11:15, 1:11:56, 1:28:28, 01:48:00.
8	9 130. In the Story, flying is depicted with 10 weightless fluidity: “they’re floating in 11 their glass bubble through a . . . blue on 12 blue crystal morning . . . Yogi whips the 13 stick . . . from side to side and the plane 14 rolls this way and that, letting him and 15 Possum spot anybody making for their 16 tail. From where they sit, however, it’s not 17 their silver rocket that’s rocking but the 18 entire vast blue dome of sea and sky. 19 There are no ups or downs up here, no 20 rights or lefts, just a barely perceptible line 21 separating one blue from another, and that 22 line is spinning and racing like mad in the 23 distance.”	24 Toberoff Decl., Ex. 1 at YONAY01238-01239; Ex. 3 at 6-7, 35; Ex. 20, No. 29.
19	20 131. In the Sequel, flying is depicted as 21 graceful in open blue skies, with little 22 distinction between up or down, left and 23 right, as the silver fighter jets angle, roll, 24 and accelerate.	25 Toberoff Decl., Ex. 3 at 35; Ex. 20, No. 29. 26 See Dkt. 53-2, generally; at 00:36:25-00:37:35, 01:09:55.
23	24 132. The Story, portrays aerial combat training 25 as edgy and intense, and builds dramatic 26 tension by emphasizing that the slightest 27 mistake can be deadly and cost lives: 28 “You wish you could do it over again . . . but in the real world you’re not going to get a second chance.”	Toberoff Decl., Ex. 1 at YONAY01239; Ex. 3 at 15, 17; Ex. 20, No. 30.

SUF No.	Uncontroverted Facts	Supporting Evidence
133.	The Sequel portrays aerial combat training as edgy and intense and emphasizes that the slightest mistake can be deadly and cost lives. There are similar statements by Maverick and other pilots.	Toberoff Decl., Ex. 3 at 15, 17; Ex. 20, No. 30. Dkt. 53-2 at 00:32:40, 00:34:30-00:41:30, 00:42:45.
134.	The Story creates suspense by characterizing aerial combat training as rigorous, and of life-or-death importance: “You fight like you train, so you’d better train like you’re going to fight,’ fighter pilots like to say.”	Toberoff Decl., Ex. 1 at YONAY01240, YONAY01241; Ex. 3 at 15; Ex. 20, No. 31.
135.	The Sequel portrays aerial combat training as rigorous, and of life-or-death importance. There are numerous similar statements by the elite fighter pilots in the Sequel, e.g., “assuming you avoid crashing into this mountain … within seconds you’ll be fired upon by enemy SAMs – you’ve all faced sustained Gs before, but this, this is gonna take you and your aircraft to the breaking point.”	Toberoff Decl., Ex. 3 at 15; Ex. 20, No. 31. Dkt. 53-2 at 00:32:40, 00:34:30-00:41:30, 00:42:45; 01:08:30.
136.	In the Story, fighter-jet crews exhibit a macho attitude in challenging each other (e.g., “moving up to the F-14 Tomcat meant crossing the magic line that separates the men from the boys”).	Toberoff Decl., Ex. 1 at YONAY01243; Ex. 3 at 29; Ex. 20, No. 32.
137.	In the Sequel, fighter-jet crews exhibit a macho attitude in challenging each other in the sky and back at the base.	Toberoff Decl., Ex. 3 at 29; Ex. 20, No. 32. Dkt. 53-2 at 00:26:05, 00:27:30, 00:38:40, 00:51:00.
138.	In the Story, fierce training “dog fights” are juxtaposed against a collegiate and convivial team spirit.	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 27, 33; Ex. 20, No. 33.

SUF No.	Uncontroverted Facts	Supporting Evidence
139.	In the Sequel, training “dog fights” are portrayed as fierce, all while maintaining a collegiate team spirit.	Toberoff Decl., Ex. 3 at 27, 33; Ex. 20, No. 33. Dkt. 53-2 at 00:34:30-00:41:30.
140.	In the Story, aerial combat training is portrayed by juxtaposing the ethereal beauty of the skies (the “vast blue dome of sea and sky”) with jarring unpredictable action at gut-wrenching speeds.	Toberoff Decl., Ex. 1 at YONAY01239; Ex. 3 at 32; Ex. 20, No. 34.
141.	In the Sequel, aerial combat training is portrayed by juxtaposing the beauty of the skies with jarring, unpredictable action at agonizing speeds.	Toberoff Decl., Ex. 3 at 32; Ex. 20, No. 34. Dkt. 53-2 at 00:34:30-00:41:30.
142.	In the Story, there are repeated references to pulling too many Gs (e.g., “When you are pulling Gs—withstanding several times the force of the earth’s gravitational pull—the pressure comes from everywhere. Even your eyelids weigh several times what they normally do, and the pressure on your chest is so intense that you can hardly breathe.”).	Toberoff Decl., Ex. 1 at YONAY01246; Ex. 3 at 18, 23; Ex. 20, No. 35.
143.	In the Sequel, there are repeated references to and visuals of the fighter pilots feeling the intense physical torture of pulling Gs, with particular focus on their strained faces under pressure.	Toberoff Decl., Ex. 3 at 18, 23; Ex. 20, No. 35. Dkt. 53-2 at 01:08:18, 01:36:10, 01:37:25.
144.	The Story portrays the danger of flying by inviting the reader to imagine pulling too many Gs, blacking out, and flying a jet at supersonic speeds while unconscious: “How do you explain. . . if you pull too many Gs a lot of times you start to black out, . . . that you were in an airplane flying around and you blacked out?”	Toberoff Decl., Ex. 1 at YONAY01242; Ex. 3 at 14, 18; Ex. 20, No. 36.

SUF No.	Uncontroverted Facts	Supporting Evidence
145.	In the Sequel, one of the fighter pilots blacks out after pulling too many Gs in repeated maneuvers, and narrowly escapes death when his jet plummets toward the ground.	Toberoff Decl., Ex. 3 at 14, 18; Ex. 20, No. 36. Dkt. 53-2 at 01:10:45-1:11:45.
146.	In the Story, a running theme is that the sheer intensity of flying top fighter jets, “strapping on 25 tons of airplane,” and pulling tortuous Gs at supersonic speeds is what adrenaline-junky fighter pilots love and live for.	Toberoff Decl., Ex. 1 at YONAY01242; Ex. 3 at 14, 18, 23; Ex. 20, No. 37.
147.	In the Sequel, a running theme that pulling Gs and intense flying at supersonic speeds is what adrenaline-junky top fighter pilots love and live for, particularly Maverick, who in a major scene pushes himself and his plane past a record-breaking Mach 10.	Toberoff Decl., Ex. 3 at 14, 18; Ex. 20, No. 37. Dkt. 53-2 at 00:11:35-00:13:20.
148.	From the Story: “So, that’s where it all starts. With the love of flying.” The Story characterizes the love of flying as all-consuming, and as coming at the expense of personal and familial relationships. The pilots are depicted as “men’s men” who care more about flying than anything else: “With raw sex waving in front of their eyes, these supremely healthy young males are standing in two and threes and talking about the hop [aerial combat training].”	Toberoff Decl., Ex. 1 at YONAY01242; Ex. 3 at 30; Ex. 20, No. 38.
149.	The Sequel repeatedly emphasizes the characters’ love of flying, even at the expense of personal and familial relationships.	Toberoff Decl., Ex. 3 at 30-31; Ex. 20, No. 38. Dkt. 53-2 at 01:07:15, 01:14:40.

SUF No.	Uncontroverted Facts	Supporting Evidence
150.	From the Story: “Taking off and flying through those fluffy white clumps was a near-sexual delight. It didn’t last. As we . . . began dogfighting with Yogi and Possum . . . [this] was brutally shattered . . . as Yogi and Possum drifted away, vanished, then turned and headed back in our direction. Suddenly Shoes whipped the stick hard . . . and before I could catch my breath or brace myself . . . he pushed the throttle and sent us into a sharp climb.”	Toberoff Decl., Ex. 1 at YONAY01246; Ex. 3 at 18-19; Ex. 20, No. 39.
151.	In the Sequel, scene with Maverick and Rooster fleeing enemy fighters but still gliding in the serene sky until suddenly a fighter jet heading right toward them causing them to ascend in a fast, sharp maneuver.	Toberoff Decl., Ex. 3 at 18-19; Ex. 20, No. 39. Dkt. 53-2 at 1:54:05.
152.	From the Story: “Shoes suddenly pointed the plane nose down and went into a dive. I couldn’t keep track of Yogi and Possum’s plane, streaking by like flashes of metallic light and nothing more.”	Toberoff Decl., Ex. 1 at YONAY01246; Ex. 3 at 19; Ex. 20, No. 40.
153.	The Sequel depicts fighter pilots unexpectedly turning their plane’s nose down in a steep dive, while dueling planes streak by in a flash.	Toberoff Decl., Ex. 3 at 19; Ex. 20, No. 40. Dkt. 53-2 at 00:39:25-00:40:30.
154.	From the Story: as a plane dives with Author in it, he explains that “I had never, felt so useless in all my life. I had lost control of everything that was happening from one second to the next, exactly the opposite of what fighter pilots feel—and must feel—all of the time.”	Toberoff Decl., Ex. 1 at YONAY01246; Ex. 3 at 15, 18-19; Ex. 20, No. 41.

SUF No.	Uncontroverted Facts	Supporting Evidence
155.	In the Sequel, Maverick demonstrates and teaches the other fighter pilots that, to succeed in their mission, their focus and control must be total, and they must react instantaneously and instinctually, with no time to think.	Toberoff Decl., Ex. 20, No. 41; Ex. 3 at 15-16; Ex. 20, No. 41. <i>See Dkt. 53-2, generally, at 01:17:45-01:21:15.</i>
156.	From the Story: “There was more flying than they had ever had . . . one-versus-one hops (one student crew against one instructor) . . . then the tough two-versus-unknown hop, in which two crews take off not knowing . . . where the bogey [instructor “enemy” plane] will come from . . . when the bogey rolls in and sends them home with a simulated [] shot. Before long the hops were running into each other, and Yogi and Possum noticed that something was happening to them. They were flying twice a day . . . edge-of-the-seat, hard flying, intense, mind-bending flying . . . They were being hammered into a team.”	Toberoff Decl., Ex. 1 at 1 YONAY01247; Ex. 3 at 15; Ex. 20, No. 42.
157.	In the Sequel, the elite squadron engages in more rigorous back-to-back combat training than ever before. Maverick (as the instructor “enemy”) takes on single crews one-on-one; then, two crews are flying when Maverick rolls in behind them from nowhere, sending them home with a simulated shot. This intense and agonizing flying continues as the squadron is being hammered into an elite team.	Toberoff Decl., Ex. 3 at 15; Ex. 20, No. 42. Dkt. 53-2 at 00:34:30-00:41:30, 01:09:20-01:10:36.
158.	From the Story: “Yogi and Possum were zipping along, shooting up mountains and down canyons and flying so low that it was hard to keep from staring at the	Toberoff Decl., Ex. 1 at YONAY01248; Ex. 3 at 16; Ex. 20, No. 43.

SUF No.	Uncontroverted Facts	Supporting Evidence
	ground, but they had to keep looking for bogeys.”	
159.	In the Sequel, the mission requires the elite squadron to train to fly fast and extremely low to the ground through canyons and then to quickly shoot up mountains.	Toberoff Decl., Ex. 3 at 16; Ex. 20, No. 43. Dkt. 53-2 at 00:48:25, 01:09:20.
160.	From the Story: “Yogi found out that his bogey had just fired a missile . . . with a heatseeking missile heading his way” he “break[s] hard—pull[s] away fast—to foul up the missile’s tracking system . . . and head[s] up in a 7.5-G climb.”	Toberoff Decl., Ex. 1 at YONAY01248; Ex. 3 at 19; Ex. 20, No. 44.
161.	In the Sequel, when Maverick finds out that an enemy plane has just fired a heat-seeking missile which is heading his way, he brakes hard and pulls away fast to foul up the missile’s tracking system and heads up in a high-G climb.	Toberoff Decl., Ex. 3 at 19; Ex. 20, No. 44. Dkt. 53-2 at 01:51:15.
162.	The Story stresses that at high angles of flight, not enough air flows into the engines of the top fighter jets, and they can die.	Toberoff Decl., Ex. 1 at YONAY01243; Ex. 3 at 17; Ex. 20, No. 45.
163.	In the 1986 Film, Goose dies after the fighter jet engine flames out as a result of poor air flow resulting in a fatal flat spin. Goose’s death plays a prominent role in the Sequel which also features scenes where engines die in the middle of flight maneuvers.	Toberoff Decl., Ex. 3 at 17; Ex. 7 at 01:06:40-01:08:10; Ex. 20, No. 45. Dkt. 53-2 at 01:13:00-01:14:00.
164.	The Story points out that when faced with deadly accidents of others in training, fighter pilots have an incredible denial mechanism, and just keep flying: “That	Toberoff Decl., Ex. 1 at YONAY01243-01244; Ex. at 31; Ex. 20, No. 46.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	3	4
5	none of these accidents dampened the pilots' enthusiasm for the plane is just another clue to the fighter pilot's code . . . Planes take off and land every day without accidents, so obviously it can be done."	6
10	11	12
13	14	15
16	17	18
19	20	21
22	23	24
25	26	27
28	In the 1986 Film, after Goose dies in a flying accident with Maverick at the helm, Maverick, though cleared of blame in the accident report, cannot forgive himself and believes there must have been something he could have done to avoid it. This character arc recurs in the Sequel via Maverick's flashbacks and interactions with Goose's son.	Toberoff Decl., Ex. 3 at 31; Ex. 7 at 01:07:35, 01:39:50; Ex. 20, No. 46 Dkt. 53-2 at 01:10:45-1:11:45, 01:17:45-01:21:15.
165.	After Goose's tragic death in the 1986 Film (the Sequel's backstory) Maverick and the others carry on flying. In the Sequel, despite a near-deadly accident in training, the fighter pilots also exhibit this denial mechanism, and just keep flying. In training the elite squadron, Maverick discusses the dangers of the planned mission but insists, in the face of skepticism regarding dangerous maneuvers, and then demonstrates, it can be done.	Toberoff Decl., Ex. 1 at YONAY01244; Ex. 3 at 31; Ex. 20, No. 47.
166.	The Story emphasizes that "accident reports that clearly demonstrate technical failures don't erase the [fighter pilot's] lingering doubt" that there must have been something he could have done but did not. The Story characterizes pilots as going out of their way to take responsibility for what happens in the air, regardless of what "reports" might say.	Toberoff Decl., Ex. 3 at 31; Ex. 7 at 01:07:35, 01:13:58-01:14:40; Ex. 20, No. 47. Dkt. 53-2 at 00:31:15-00:32:30, 00:35:04-00:35:34.

SUF No.	Uncontroverted Facts	Supporting Evidence
168.	In the Story, crews in training are under intense time pressure and are set back if they botch training exercises. Yogi and Possum train against a ticking clock, “And now they [Yogi and Possum] have only three weeks left to make it up.”	Toberoff Decl., Ex. 1 at YONAY01240; Ex. 3 at 17; Ex. 20, No. 48.
169.	In the Sequel, Maverick and his elite squadron train under a ticking clock as they have only three weeks to be mission ready. They are under intense time pressure and suffer setbacks when training exercises are botched.	Toberoff Decl., Ex. 3 at 17; Ex. 20, No. 48. Dkt. 53-2 at 00:42:40.
170.	The Story elevates the tension surrounding flying mistakes by focusing in on the exorbitant cost of each fighter jet and the cost/difficulty of obtaining parts: “the biggest problem, however, is the F-14’s price.”	Toberoff Decl., Ex. 1 at 1 YONAY01243; Ex. 3 at 7, 36; Ex. 20, No. 49.
171.	In the Sequel, the Vice Admiral refers to huge, multimillion-dollar cost of a top fighter jet that was possibly irreparably damaged during training, at government expense.	Toberoff Decl., Ex. 3 at 36; Ex. 20, No. 49. Dkt. 53-2 at 01:22:35-01:23:00.
172.	In the Story, there is a running theme that, with all the high-tech machinery, it still comes down to people—to a handful of courageous elite fighter-jet crews. “This is the anachronism of fighter aviation. Even in this age of remote-control, pushbutton warfare, the survival and effectiveness of the entire U.S. Pacific Fleet rests on a few dozen young men getting themselves catapulted off a flight deck and hanging it in the skies against numerically superior, land-based enemy planes.”	Toberoff Decl., Ex. 1 at YONAY01240-01241; Ex. 3 at 21; Ex. 20, No. 50.

SUF No.	Uncontroverted Facts	Supporting Evidence
173.	In the Sequel, the Rear Admiral lectures Maverick that flyboys like him are obsolete, soon to be replaced by pushbutton drones. Maverick and the elite squadron he trained proves him wrong; that it all comes down to the skill and courage of people. Catapulted one-by-one into the sky off the flight deck of an aircraft carrier, they defeat superior land-based enemy missiles and numerically and technologically superior fighter jets against all odds.	Toberoff Decl., Ex. 3 at 21-22; Ex. 20, No. 50. Dkt. 53-2 at 00:13:52-00:16:21, 01:30:30-1:56:00.
174.	The Story draws attention to some hotshot pilots who are irreverent of Navy command and play games in the air. For instance, as legend has it, “thumping,” where “a guy might be lying straight and level without a care in the world when another would come slinking behind and below, then shoot under him and go into a sharp climb right in front of his nose—not only scaring the living daylights out of him but interrupting the air currents around his wings.”	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 31-32; Ex. 20, No. 51.
175.	In both the 1986 Film and the Sequel, the irreverent Maverick pulls this exact same “thumping” stunt, unexpectedly startling other top fighter pilots.	Toberoff Decl., Ex. 3 at 31-32; Ex. 20, No. 51; Ex. 7 at 00:32:57. Dkt. 53-2 at 00:36:30.
176.	In the Story, the hotshot fighter-jet crews engaged in aerial showdowns are likened to courageous cowboys (e.g., “At Mach 2 and 40,000 feet over California, it’s always high noon.”; “That’s where fighter pilots such as Yogi and Possum figure in . . . to ride shotgun over the carrier’s three squadrons of attack planes.”).	Toberoff Decl., Ex. 1 at YONAY01238, YONAY01240; Ex. 3 at 22, 28; Ex. 20, No. 52.

SUF No.	Uncontroverted Facts	Supporting Evidence
177.	In the Sequel, Maverick and some of the hotshot fighter pilots he trains are portrayed as audacious cowboys with slick combat maneuvers who engage in aerial one-on-one duels/showdowns in a high-desert setting, evoking the same “Western” analogy and imagery.	Toberoff Decl., Ex. 3 at 22, 28; Ex. 20, No. 52. See Dkt. 53-2, generally.
178.	Part of the Sequel’s title, “ <i>Maverick</i> ,” is itself evocative of popular Western film and television such as the 1994 film <i>Maverick</i> , which was based on the 1957-1962 television series <i>Maverick</i> , and the 1952 film <i>The Maverick</i> .	Toberoff Decl., Ex. 23 at 1; Ex. 24 at 1; Ex. 25 at 1.
179.	The Story features a stunning air maneuver, the “vertical egg,” in which two planes chase each other in ever-widening vertical loops.	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 19; Ex. 20, No. 53.
180.	In the Sequel, in an intense aerial combat training scene, two planes are engaged in this, chasing each other in ever-widening vertical loops.	Toberoff Decl., Ex. 3 at 19; Ex. 20, No. 53. Dkt. 53-2 at 00:40:20-00:41:30.
181.	The Story creates dramatic tension by emphasizing that there is no way to practice using a jet’s ejection seat by pulling on its black and yellow striped bars. A pilot can only avoid death by remembering the steps: “That’s how the ejection seat is supposed to work if anything goes wrong with the plane, but the trouble is you can’t practice with it, only memorize a series of steps.”	Toberoff Decl., Ex. 1 at YONAY01246; Ex. 3 at 17; Ex. 20, No. 54.
182.	The Sequel features Goose’s son, Rooster, in an F-14 cockpit when the plane has been shot. The camera focuses on the black and yellow striped eject bars;	Toberoff Decl., Ex. 3 at 17; Ex. 7 at 01:07:35; Ex. 20, No. 54. Dkt. 53-2 at 01:56:25.

SUF No.	Uncontroverted Facts	Supporting Evidence
	Rooster frantically pulls on the bars to eject, but they won't work. And, in the 1986 Film, Goose dies when he ejects but hits his head on the F-14's canopy in the execution of the ejection steps.	
183.	The Story prominently features "a Blue Angel 'back-to-back'" stunt where a fighter pilot flies upside down close and parallel to another jet: "pilots demonstrate the agility and grace of their 25-ton monsters."	Toberoff Decl., Ex. 1 at YONAY01244; Ex. 3 at 19; Ex. 20, No. 55.
184.	Both the 1986 Film and Sequel prominently feature this "back-to-back" stunt performed by Maverick.	Toberoff Decl., Ex. 3 at 19; Ex. 7 at 00:08:56; Ex. 20, No. 55. Dkt. 53-2 at 00:40:05.
185.	The Story emphasized that the Wolfpack squadron leader does "200 push-ups . . . a day" in preparation for competitive aerial combat "joust[s]."	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 13; Ex. 20, No. 56.
186.	In the Sequel, when the top pilots are competing against Maverick, they place a bet that whosever plane is "shot" has to do "200 push-ups," followed by Maverick's trainees repeatedly doing 200 push-ups on the tarmac. Rooster proves his worth by completing his 200 push-ups, after his superior says he can stop.	Toberoff Decl., Ex. 3 at 13, 33; Ex. 20, No. 56. Dkt. 53-2 at 00:34:30-00:41:30.
187.	From the Story: "[Yogi] finished flight school at the top of his class[.]" "Yogi and Possum finished the Top Gun course . . . As their class picture went up in the briefing room . . . the news came that the Wolfpack was named top fighter squadron on the West Coast—one of only two contenders for the Admiral Clifton Award,	Toberoff Decl., Ex. 1 at YONAY01242, YONAY01247; Ex. 20, No. 57.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	the navy's greatest tribute to a fighter squadron."	
4	188. In 1986 Film, Maverick finishes the Top Gun course second in his class only to Iceman. It is further emphasized in the Sequel that each of the members of the elite squadron being assembled for the mission is an elite Top Gun graduate.	Dkt. 53-2 at 00:17:50, 00:19:30, 00:32:00. Toberoff Decl., Ex. 20, No. 57.
9	189. The Story draws attention to wooden plaques and an inner room at Top Gun school "covered from floor to ceiling with heavily carved wooden plaques—[]like coats of arms—of the various squadrons."	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 26; Ex. 20, No. 58.
13	190. The Sequel features an inner room at Top Gun covered from floor to ceiling with carved wooden plaques, focusing on the plaque for Maverick's graduating class, showing Maverick and Goose together and a plaque featuring Iceman (now an Admiral and the Commander of the Pacific Fleet).	Toberoff Decl., Ex. 3 at 26; Ex. 20, No. 58. Dkt. 53-2 at 00:17:00-00:17:25.
19	191. In the Story, intense training and flying is juxtaposed against frat-boy like R&R at a bar where the pilots drink beer and carouse. "It is the Wednesday night happy hour, and the small, noisy room is packed with pumped-up fighter jocks."	Toberoff Decl., Ex. 1 at YONAY01242; Ex. 3 at 7, 12, 27; Ex. 20, No. 59.
24	192. In the Sequel, frat-boy like R&R is featured, particularly at a crowded, noisy Top Gun bar where showy fighter-jet jocks drink beer and carouse. This stands in contrast to the liberating feeling of flight.	Toberoff Decl., Ex. 3 at 12, 27; Ex. 20, No. 59. Dkt. 53-2 at 00:24:50-00:30:30.

SUF No.	Uncontroverted Facts	Supporting Evidence
193.	The Story portrays fighter pilot jocks as cocky and sometimes reckless. Stopped by police for speeding, a pilot told a cop: “‘It’s all right, officer, we’re from California,’ a tanked-up marine hotshot once told a cop who had stopped him. ‘This is California,’ the cop answered, and wrote him up.”	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 25; Ex. 20, No. 60.
194.	In the Sequel, Maverick is portrayed as cocky in the face of authority figures and reckless at times. Hangman, like Maverick, is also cocky and sometimes reckless.	Toberoff Decl., Ex. 3 at 25, 27; Ex. 20, No. 60. Dkt. 53-2 at 00:17:25, 00:19:15, 00:42:05, 00:50:25-00:50:55, 00:51:35.
195.	The Story portrays fighter pilots fraternizing as a way of bonding and blowing off steam. “They do it . . . for the same reason stunt men or [] cops or anybody else who hangs it out there for a living heads for a bar after a day’s work. ‘You’re out there supersonic going from deck to 40,000 feet and back down to the deck, simulating killing people and getting yourself killed, handling actual emergencies, and when you finally come in and land you can’t even tell your wife about it.’”	Toberoff Decl., Ex. 1 at YONAY01242; Ex. 3 at 12, 24; Ex. 20, No. 61.
196.	In the Sequel, after grueling training sessions, the fighter pilots fraternize together, bonding at the bar, playing shirtless football etc. The close bond between Maverick and Goose, which ended in Goose’s death, is featured, while Maverick struggles to rekindle a romantic relationship with Penny due to the demands and danger of his profession.	Toberoff Decl., Ex. 3 at 12, 24; Ex. 20, No. 61. Dkt. 53-2 at 00:31:15-00:32:30, 00:59:00-01:01:20, 01:02:30-01:05:50.

SUF No.	Uncontroverted Facts	Supporting Evidence
197.	In the Story, close camaraderie pervades the squadron, despite intense competition between the fighter-jet crews. “The Wolfpack organized a bash . . . to give naval aviators back from a cruise a place to let off steam. Anything goes, including, after enough beer went down one evening, pushing all the tables together in the shape of a carrier deck, stretching a few towels across, and doing belly landings.”	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 12; Ex. 20, No. 62.
198.	In the Sequel, the squadron is close, displaying camaraderie despite intense competition between the fighter-jet crews. In one scene at their favorite bar, Goose’s son, Rooster, unplugs the juke box and plays “Great Balls of Fire” as the others chime in. In another, the crews play a wild game of shirtless tackle football where everyone plays both offense and defense.	Toberoff Decl., Ex. 3 at 10, 12; Ex. 20, No. 62. Dkt. 53-2 at 00:28:15-00:31:35, 00:59:00-01:01:20.
199.	In the Story, the Wolfpack squadron presents “a good-size brass bell” to the bar. “It was no ordinary bell. The Wolfpack had brought it for a purpose, to help uphold the club’s bylaws, which state that a bell should be rung on two occasions—when someone walks into the club with his hat on, or when a customer finds himself behind the bar. On either occasion, the transgressor picks up the tab for everybody’s drinks.”	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 12; Ex. 20, No. 63.
200.	In the Sequel, hanging behind the bar is a large brass bell with a special purpose. As explained by the bar owner (Maverick’s love interest), the bell is rung when someone breaks the house rules—no cell phones on the bar and don’t disrespect a lady or the Navy. On either occasion, the	Toberoff Decl., Ex. 3 at 12; Ex. 20, No. 63. Dkt. 53-2 at 00:23:35, 00:29:00.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	transgressor (including Maverick) picks up the tab for everybody's drinks.	
4	201. From the Story: "There were the drinking sessions . . . But most of all there was flying. Glorious flying. The greatest fighter flying in the world was taking place every day . . . as Top Gun's [] vets set out to rewrite every single fighter aviation text ever written."	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 36; Ex. 20, No. 64.
9	202. The Sequel celebrates and showcases incredible flying which we witness in the crews' combat training sessions and their actual combat mission. Maverick literally throws out the aviation textbook and seeks to rewrite the Navy's aviation rules (e.g., how low to the ground the top fighter jets can fly or how many Gs a pilot can pull in a steep ascent) to achieve the impossible mission he and his squadron must fly. Maverick tells his squadron that "you'll weigh close to two thousand pounds ... fighting with everything you have just to keep from blacking out," when flying their mission.	Toberoff Decl., Ex. 3 at 36; Ex. 20, No. 64. Dkt. 53-2 at 00:33:15, 00:34:30-00:41:30, 00:49:30-00:51:20, 01:08:09, 01:09:00-1:13:00, 01:28:50-01:40:00, 01:48:15-1:57:15.
20	203. In the Story, as surprise R&R, the Wolfpack is presented with "a glorious sailing yacht" which they set out on.	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 12, 27; Ex. 20, No. 65.
24	204. In the Sequel, Maverick is taken for a surprise ride on a beautiful sailboat by his love interest.	Toberoff Decl., Ex. 3 at 12, 27; Ex. 20, No. 65. Dkt. 53-2 at 00:45:05-00:46:44 Ex. 20, No. 65.

SUF No.	Uncontroverted Facts	Supporting Evidence
205.	From the Story: “[E]ven the greatest air battle is a series of individual duels—that, while a dozen pilots may blast off a carrier at one time, once they get up there they are alone, hurtling through enemy air at 750 miles an hour and tilting against tiny motes of silver that zoom out of the blue to become fire-spitting machines.”	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 17; Ex. 20, No. 66.
206.	In the Sequel, the squadron launches from an aircraft carrier for their mission, but as they try to make their way back through enemy airspace, they are isolated when attacked by enemy planes and the combat scenes are just like this.	Toberoff Decl., Ex. 3 at 17-18; Ex. 20, No. 66. Dkt. 53-2 at 01:30:30, 1:50:50-1:56:00.
207.	The Story describes true combat aerial “duels” “when one knight from each side would come out and they’d joust, one on a white horse and one on a black horse.”	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 22; Ex. 20, No. 67.
208.	In the Sequel, light silver fighter jets in the squadron engage in one-on-one duels with black enemy planes.	Dkt. 53-2 at 01:51:30-01:54:55. Toberoff Decl., Ex. 20, No. 67.
209.	The Story portrays a dangerous enemy encounter with playful cheekiness. “As they escorted the [Russian] plane away, Yogi edged up so close that he could look over and see the Russians in their cockpit, staring at him . . . He waved the way one does when someone is taking pictures, but the Russians didn’t wave back—not even when Yogi’s backseater took their picture.”	Toberoff Decl., Ex. 1 at YONAY01245; Ex. 3 at 32; Ex. 20, No. 68.
210.	In the 1986 Film, Maverick flies close to and level with a Russian MiG, smiles, and takes a snapshot of the Russian pilot. In	Toberoff Decl., Ex. 3 at 32; Ex. 7 at 00:08:58; Ex. 20, No. 68.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	the Sequel, Maverick and his backseater, Rooster, fly close to and level with an enemy plane that is trying to escort them away, Maverick smiles and waves, but the enemy pilot does not wave back.	Dkt. 53-2 at 01:50:25-01:50:45.
6	211. The Story emphasizes that the F-14's "wings can sweep back for fast flying or open to the sides like an eagle's for landing or just for cruising around[.]"	Toberoff Decl., Ex. 1 at YONAY01243; Ex. 3 at 19-20; Ex. 20, No. 69.
9	212. In the 1986 Film (where they mostly fly F-14s) this is not highlighted. But in the Sequel, of all technical aspects, this one is selected as a plot point, as Maverick displays this F-14 feature by using it to enable a very short takeoff on a bombed-out runway.	Toberoff Decl., Ex. 3 at 19-20; Ex. 20, No. 69. Dkt. 53-2 at 01:47:45-01:48:45.
15	213. The Story characterizes landing a fighter jet on an aircraft carrier in the middle of the ocean as a "controlled crash . . . if you are lucky."	Toberoff Decl., Ex. 1 at YONAY01244; Ex. 3 at 20; Ex. 20, No. 70.
18	214. In the Sequel, in a major scene after their mission, Maverick completes the dangerous task of crash-landing an F-14 jet on an aircraft carrier, with his wheels shot off.	Toberoff Decl., Ex. 3 at 20; Ex. 20, No. 70. Dkt. 53-2 at 01:58:30-01:59:00.
22	215. The Story spotlights values: dedication, focus, patriotism and the heroism of fighter pilots.	Toberoff Decl., Ex. 3 at 20, 35-36; Ex. 20, No. 71; <i>see</i> Ex. 1, generally.
25	216. The Sequel contains themes of dedication, willpower and persistence patriotism and the heroism of fighter pilots.	Toberoff Decl., Ex. 3 at 20, 35-36; Ex. 20, No. 71; <i>see</i> Ex. 1, generally. <i>See</i> Dkt. 53-2, generally.

SUF No.	Uncontroverted Facts	Supporting Evidence
217.	From the Story: ““Really great fighter pilots are like the great gunfighters in the Old West . . . They didn’t have to tell anybody how great they were—all they had to do was just stand there, and the aura was such that everybody knew. It’s the same here. Everybody knows.””	Toberoff Decl., Ex. 1 at YONAY01247; Ex. 3 at 22; Ex. 20, No. 72.
218.	In the Sequel, Maverick, the most legendary Top Gun pilot, is portrayed like this throughout the movie. E.g., Cyclone remarks that Maverick’s reputation as a great fighter pilot and troublemaker precedes him; Maverick sits relaxed at the bar while he causally looks on as the other hotshot pilots compete for status with bravado.	Toberoff Decl., Ex. 3 at 22; Ex. 20, No. 72. Dkt. 53-2 at 00:17:20, 00:24:00-00:27:40.
219.	The Story’s settings and their sequencing feature jumps between base scenes, classroom scenes, bar scenes, sailing scenes, mission scenes, and flashbacks, with intense flying scenes interspersed throughout.	Toberoff Decl., Ex. 3 at 32-33; Ex. 20, No. 73; <i>see</i> Ex. 1, generally.
220.	The Sequel’s settings and their sequencing feature jumps between base scenes, classroom scenes, bar scenes, sailing scenes, mission scenes, and flashbacks, with intense flying scenes interspersed throughout.	Toberoff Decl., Ex. 3 at 32-33; Ex. 20, No. 73. <i>See</i> Dkt. 53-2, generally.
221.	The Story takes place on a naval base with weapons of war but focuses on the backstories, passions, and dreams of those who are stationed there.	Toberoff Decl., Ex. 3 at 8-9, 26; Ex. 20, No. 74; <i>see</i> Ex. 1, generally.
222.	The Sequel takes place on a naval base with weapons of war but focuses on the	Toberoff Decl., Ex. 3 at 26; Ex. 20, No. 74. <i>See</i> Dkt. 53-2, generally.

SUF No.	Uncontroverted Facts	Supporting Evidence
2	backstories, passions, dreams, and past regrets of those who are training there.	
223.	The Story features intergenerational tensions between the older experienced pilots (now instructors) and the younger generation of restless, ambitious up-and-coming fighter pilots.	Toberoff Decl., Ex. 1 at YONAY01241; Ex. 3 at 11-13; Ex. 20, No. 75.
224.	The Sequel features intergenerational tensions between the older experienced Maverick (now an instructor) and the younger high-strung fighter pilots.	Toberoff Decl., Ex. 3 at 11-13; Ex. 20, No. 75. <i>See Dkt. 53-2, generally.</i>
225.	The Story features the theme that success in warfare comes down to the pilot, his courage and strength of character, not the high-tech jet he's flying.	Toberoff Decl., Ex. 1 at YONAY01241, YONAY01243-01244; Ex. 3 at 21; Ex. 20, No. 76.
226.	The Sequel contains the theme that success in warfare comes down to the pilot, his bravery, grit, and strength of character, not the high-tech jet he's flying.	Toberoff Decl., Ex. 3 at 21; Ex. 20, No. 76. Dkt. 53-2 at 00:33:20, 00:50:48, 01:10:24.
227.	In the Story, the characters speak in a droll, idiomatic, techy, and charmingly unguarded way, using phrases and linguistic quips like "It's Miller time," "shoot off their watches" and "Fight's on."	Toberoff Decl., Ex. 1 at YONAY01239, YONAY01240, YONAY01242.
228.	In the Sequel, the characters speak in a droll, idiomatic, techy, and charmingly unguarded way, using phrases like "Fight's on," which is invoked multiple times.	Dkt. 53-2 at 00:35:08, 00:37:20, 00:39:25.
229.	In the Story, Yogi and Possum's journey culminates with the duo leaving Top Gun for a real-world mission in the Indian Ocean.	Toberoff Decl., Ex. 1 at YONAY01248.

SUF No.	Uncontroverted Facts	Supporting Evidence
230.	The Sequel culminates with the squadron heading out on its real-world mission to strike an enemy nuclear facility.	Dkt. 53-2 at 01:28:40 – 01:58:40.
231.	The Sequel was released on May 27, 2022.	Toberoff Decl., Ex. 9 at 1.
232.	According to the industry website imbdPro.com, the Sequel has grossed nearly \$1.5 billion dollars worldwide, as of October 8, 2023.	Toberoff Decl., Ex. 9 at 1.
233.	Don Simpson and Jerry Bruckheimer, the producers of the 1986 Film, and the Sequel (as to Bruckheimer), recalled reading the Story in <i>California Magazine</i> shortly after its publication and knowing they “[had] to get this”; “[had] to buy this,” and immediately had their “development girl” reach out to <i>California Magazine</i> .	Toberoff Decl., Ex. 37 at 00:15:43-00:16:20; Ex. 38 at 1.
234.	Simpson and Bruckheimer recalled focusing on the “colorful incidents, anecdotes, and characters” as well as their cool names, “like ‘Hollywood … Yogi, Possum’” depicted in the Story.	Toberoff Decl., Ex. 37 at 00:17:00-00:17:10; Ex. 38 at 2.
235.	Simpson recalled pitching the movie to “head [PPC] admins” as being the story of “the process of becoming a Top Gun … and succeed at it, and the price you have to pay to be, frankly, the most important warrior we have.”	Toberoff Decl., Ex. 37 at 00:17:44-00:18:16; Ex. 38 at 3-4.

1 DATED: November 6, 2023

Respectfully submitted,

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5 *Attorneys for Plaintiffs*

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